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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 248

CENTRAL PACKING COMPANY, INC.,
Petitioner,

vs.

RYDER TRUCK RENTAL, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

DOUGLAS STRIPP
RUSSELL W. BAKER
1500 Home Savings Building
Kansas City, Mo. 64106
ROBERT H. BINGHAM
Home State Bank Building
Kansas City, Kansas
Attorneys for Respondent.

Of Counsel:
WATSON, ESS, MARSHALL & ENGGAS,
STANLEY, SCHROEDER, WEEKS, THOMAS & LYSAUGHT.

R. L. MERRIHALL, INC., 1103 Oak Street, Kansas City, Mo. 64106, HArrison 1-3070

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I.

This action was brought for breach of contract. The Court of Appeals reversed the trial court and held, as a matter of law, that Petitioner had breached the contract. The case was remanded for further trial on the issue of remedy. Petitioner's first argument is simply that the Court of Appeals should have remanded the issues of breach and remedy. Petitioner's quarrel with the Court of Appeals is that breach should not have been determined as a matter of law.

The lease-contract in suit was dated January 25, 1960, but was retroactively effective to July 10, 1959 (Appendix pp. A10, A20). The first truck was placed in service under the lease on July 10, 1959 and the remaining twenty-nine trucks were placed in service during September and October, 1959 (Appendix pp. A27-A31). After the lease was signed on January 25, Petitioner continued to use and operate the trucks for about three weeks, when on February 13 it abruptly ceased using them and did not thereafter ever again use them (R. 97, 74). Petitioner continued shipments of its meat products at a rate of more than four million pounds per month, utilizing rail and motor common carrier, during February and March, 1960 (R. 72, 73). Respondent eventually learned that Petitioner had purportedly made an assignment of the lease, on April 1, 1960, to another meat packing company (R. 237). There is no claim that this assignee ever performed under the lease.

Petitioner now, for the first time, claims that by making *no use* of the trucks it could satisfy the use requirement which the lease imposed. The mere statement of this proposition is sufficient to demonstrate its faulty logic. Some irrelevant illustrations are hypothesized in support of this new theory (Pet. Br. p. 5). Moreover, the record affirmatively refutes these hypotheticals. The record shows that all of Petitioner's customers did not suddenly specify rail shipments, nor did Petitioner's business suddenly change so that no rolling equipment was required after February 13. Rather, truck common carrier shipments increased after February 13, 1960 (R. 73, 60, Interrog. 10(b)).

The Court of Appeals correctly construed the parties' contract as requiring use of the trucks. Since use was required and Petitioner did not use, the contract was

breached as a matter of law and the case was properly remanded for determination of remedy.

II.

Petitioner's second point is devoid of any reason for granting the Writ (Rule 19 of this Court). Petitioner makes no claim that its second point raises any constitutional issue.

The construction of this commercial contract between private parties is a question of local law. There is no federal law controlling such a determination. The pre-*Erie* decisions and admiralty decision cited by Petitioner (Pet. Br. 6-7) do not support review here. Every year the Courts of Appeals decide scores of "garden variety" contract cases involving no issues of federal law. One appeal should suffice for such matters, including this one.

Respondent respectfully urges that the Petition be denied.

DOUGLAS STRIPP
RUSSELL W. BAKER
1500 Home Savings Building
Kansas City, Mo. 64106
ROBERT H. BINGHAM
Home State Bank Building
Kansas City, Kansas
Attorneys for Respondent.

Of Counsel:
WATSON, ESS, MARSHALL & ENGGAS,
STANLEY, SCHROEDER, WEEKS, THOMAS & LYSAUGHT.

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